

The Law

Tried by the

Principles of Equity

AND

PRINCIPLES

OF THE

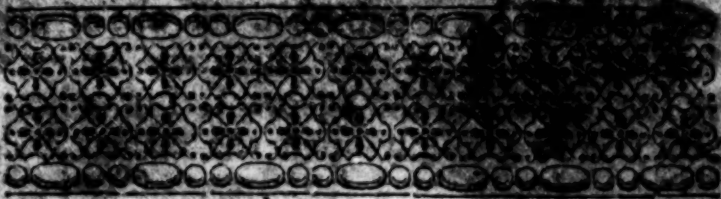
Civil Law



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TIME-BARGAINS

Tryed by

Equity and the Civil Law.



WHEN any great Point of Divinity, Law, or Politicks comes to be disputed, and to be the general Topick of all Conversation, every Man thinks himself oblig'd to say something to the Case: And this is the fit Time for a Man, who is either ambitious to appear in Print, or whose Necessities oblige him to become Author, to publish something to the World. I shall not determine which of these Reasons has brought this little Piece to the Publick, perhaps both. But as Humanity or Love to One's Country is every ambitious Man's, as well as Author's golden Leaf for his Actions, so I must

on; and therefore I must de-
clare, that I have published this out of pure
charity towards my Brethren Animals,
the Impudent and the Ignorant. I have heard
them talk so foolishly upon the present great
Dispute, that I think its as much Charity to
afford them some plausible Arguments, and
to put learned Quotations in their Heads, as
it is to give a drunken Beggar a Farthing to
buy Drink with.

The present great Question in all Compa-
nies, is, What will become of TIME BAR-
GAINS? Will they be good or not? Con-
cerning this grand Debate, I design to give
my Opinion in the following Sheets.

I shall not pretend to determine what
would be the Issue, if this Point were to be
try'd at common Law, it would swell my
little Volume to a Bulk too great for the Use
of those Gentlemen, for whom I principally
design it; I think this one Question affords
such a Fund for Law-pleas, that it is of
Consequence enough to deserve the Parlia-
ment's Notice, which cannot be ignorant, that
Multiplicity of Law-suits is of almost as bad
a Consequence to the Nation, as Multipli-
city of Transfers. The Parliament ought to
give their Determination in all Cases, which
they take Notice of, according to the Laws
of Nature and Nations, and the universal
Rules of Equity; and therefore in this Light
only,

only, I am to consider this. *Contractus* shall first take a short View of the Principles of the Law of Nature, and of the Civil or Roman Law, with respect to *Contractus*, and more particularly with respect to the Contract of Sale.

A Contract, to take it in its most general Signification, is much the same with what the Civilians call *Conventio*, which is by them defined, *Duorum pluriumve in idem placitum & consensus*. The Consent and Agreement of two or more Persons about any Thing.

By the very Nature of it, there ought to be an exact Equality observed, so that neither Party should be a Loser; and if any of them is wronged, then the Law ought to assist him, and do him Justice if the other Party will not, *Grotius lib. 2. cap. 12. § 8. In contractibus natura aequalitatem imperat, & iniquidem, ut ex inequalitate jus oritur minus habenti*. And the Romans, those great Patrons of Justice and Equity, observed this Rule so exactly, that in all Contracts, if either Party was wrong'd, he had several different Actions, by which he might get himself redressed, and the other Party was sure to be punished, if it was made appear that he had been guilty of Covin or Deceit.

The particular Sort of Contract we shall have Occasion to take most Notice of, is, what we call a Contract of Sale: The Civilians,
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Contractus bona fidei, de re certo pretio permutanda.

It was called *Contractus bona fidei*, because in any Suits upon this Contract, the Judge was not obliged to observe exactly the Terms of the Agreement, but had by his Office a Latitude to recede from them a little, and to determine according to what he thought just and equitable.

The Writers upon the Law of Nature and Nations are of Opinion, That there ought to be in this (as in all other Contracts) an exact Equality observed, and if the Seller sells his Goods below what they are worth, then he ought to be redressed, and the Buyer obliged to restore the Goods upon receiving back the Price he paid, or to make up what is wanting of the Price. And upon the other Hand, if the Buyer pays more than the Value, the Seller is obliged, either to refund the Superplus, or to take back his Goods, and restore the whole Price received. *Grot. lib. 2. cap. 12. § 11. In ipso actu principali, hac desideratur aequalitas, ne plus exigatur quam par est. Quod in contractibus beneficiis vix locum possit habere — at in permutatoris omnibus sollicite id observandum est.*

The Civil Laws of all Nations differ more or less from this general Law of Nature, only for Convenience, and to prevent the Multi-

Multiplicity of Law-suits. The Law allowed the *Actio de Rescindenda Venditione ob enormam lesionem*, only when the Inequality exceeded the half of the Value of the Thing sold, l. 2. *Cod. de Rescind. vend. Rem. majoris pretii, si tu vel pater tuus minoris distraxeris, humanum est, ut vel pretium te restituyente emptoribus, secundum venundatum recipias, auctoritate Judicis intercedente: vel si emptor elegerit, quod deest justo pretio recipias, Minus autem pretium esse videtur, si nec dimidia pars veri pretii soluta sit.* And there was the same Remedy for the Buyer, if he bought, for more than a half dearer than he ought to have done: But by their Law, there were several other Actions allowed for other Reasons, even when the *Lesio* or Inequality did not extend so far, such as the *Actio Rehibitoria*, *Actio quanti minoris*, &c. And it was a general Rule with them, *In contractibus ubi bona fidei sunt, etiam majoribus, officio Judicis, causa cognita, publica jura subveniunt*, l. 1. *Cod. Quibus ex cau. Maj.*

By the common Law and Customs of England, we are obliged for the Encouragement of Trade and Commerce, not to enquire so strictly into the Equality of private Peoples bargains, we allow every Man to make the best Bargain for himself he can, providing he makes use of no plain and open Fraud.

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But when we come to consider a Case by the Laws of Nature and Equity, then we must have no Respect to the Laws of any particular Country; for, as Cicero says, *Leges, iniqua tollunt quatenus teneri manu possunt, Philosophi quatenus ratione & Intelligentia.* And Grotius very well adds. *Hi vero qui legibus Civilibus Subjecti non sunt, id sequi debent, quod æquum esse ipsis ratio recta docet.* Grotius, l. 2. c. 12. § 12. If I understand right the Power of Parliament, this ought to be their Rule.

The first Rule whereby to determine whether the Price be equal or not, is that Rule of the Civil Law laid down by *Johan. Voet.* in his Commentary on the Digests, l. 18. Tit. 5. § 7. *Pretium autem an Justum, an Injustum sit, ex qualitate rei, & reddituum quantitate æstimandum est.*

The next Rule is: The general Opinion of the World about the Thing sold; For every thing is worth as much as the People of the Country where it is sold generally give at that Time for such Things, providing the People be not some way or another, led into a general Error about the Value of the Thing to be sold, for it's very certain, a whole People may be deceived as well as one Man.

If a whole People are in an Error, and believe a Thing of more Value than it intrinsically

fically is, no one of these People are obliged to fulfil the Bargains they made while they were led into them by this Error, no more than any private Man would be, if he alone were led into a Bargain by an Error about the Value of the Thing he bought. *Grotius, l. 2. c. 11. § 6. Si promissio fundata sit in presumptione quadam facti, quod non ita se habeat, naturaliter nullam ejus esse vim; quia omnino promissor non consensit in promissum, nisi sub quadam conditione qua reipsa non extitit.*

Now, as to our TIME BARGAINS, that I may proceed in a Method, I shall divide them in Bargains on Stock; first and second Subscriptions; and Bargains on third and fourth Subscriptions.

The Bargains on Stock, &c. are either such, as are already in a manner compleated by transferring the Stock, or assigning the Subscription Receipt, and taking Bills, Bonds, or other Security for the Price: Or such, as stand in Contract between the Buyer and Seller, the Stock, &c. still remaining in the Name and Possession of the Seller.

These Bargains, which are so compleated, are again of two sorts. By (as I believe) most of them the Stock, &c. was sold a great deal above the Market Price at the Time, and a Bill or Bond taken for the Money, payable at some Time after: O-

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hers were sold at the Market Price, and a Bond or Bill taken for the Price, with common Interest from the Date. This last sort hardly deserve the Name of TIME BARGAINS: However, we shall now consider them as such, and discuss them first, because whatever Argument is good in Law against them, will be good against every one of the rest.

And even as to these Bargains we must distinguish, Whether there was any Deceit and Knavery committed, in running up the Value of the Stock so high, or if there was not. Likewise, we must distinguish whether these Bargains were entred into with the Directors themselves, or with other People who knew nothing of the Management.

If the Directors and Managers have been guilty of no Sinister Means or Methods, to raise the Price of their Stock above its real Value, (which I should be glad it were possible to believe) and are as Harmless and Innocent, as any other that deal in that Stock: And if the Stock was Bought from a Man who was noways concerned in the Management, and knew nothing about the Value of it: The Buyer, by the Law of Nature, which requires an exact Equality in all Contracts, is free from his Bargain, in as far as the Price exceeds the
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real Value of the Thing bought ; and because he was in an Error, when he promised so much for it, he imagined that the Company, that is, the Directors, had a Scheme of Trade in their View, which would make greater Returns yearly to them, and so enable them to divide Fifty per Cent ; But now he finds he was in a Mistake, they never had such a Thought : His Promise Therefore being founded in *Presumptione facti quod non ita se habet*, is in it self void, and by the Civil Law, the Buyer is certainly Free, because the *Lasio* or Loss he sustains by the Bargain, is *ultra dimidium valoris rei vendita* : And likewise, because there was a latent Defect in the Thing sold, which if the Buyer had known, he would never have promised so much for it : For People commonly imagined, that the Profits of the Company were to proceed from some Scheme of Trade, which would have made a great and lasting Dividend, whereas all the Profits the Directors ever had in View, was what they made by the new Subscriptions, which could make but a short temporary Dividend. In this Case, the Buyer would have had by the Civil Law his Action *quantum minoris*, which was competent against the Seller, *ob defectum in re vendita, quem si scivisset, tantum non fuisset empturus*, which Action was competent when the Seller was ignorant of the

Defect, for if he knew of it, there was an *Action de dolo* against him, *ad totius damni reparationem*.

But if these Bargains were entered into with any of the Directors or Managers, there is a great deal more to say: For People are not only free from any TIME BARGAINS entered into with any of them, but have them further obliged to make up any Loss they have sustained, by making such unreasonable Bargains. For the Directors and all those concern'd in the Management of that Stock, ought to know the Value of the Stock they have under their Care, as well as any Artift ought to know that Sort of Work he deals in: If they know that what they sold was not worth Half of what they got for it, they surely were great Cheats, and guilty of the most heinous Fraud, in accepting of One Thousand Pound, for what they knew was not worth Five Hundred; and if they were ignorant of the Value of that very Stock they had under their Care, it was a supine Ignorance, and does not excuse them from an *Action ad id quod Interest*. *Johan. Voet. l. 18. Tit. 1. §. 6. Nam si sciverit, vel supina aut affectata ignorantia in venditore appareat, majus est, ut nihilominus ad id quod interest damnari debeat, veluti si vitæ ejus hæc artis & instituti sit, ut ignorare non debuerit, istam rei a se venditæ qualitatem.*

We shall now suppose, for Argument's Sake, that there were deceitful and false Stories handed about by the Directors, and other Managers, for making People believe that they had secret Schemes and Projects for making vast Profits, which would raise the Value of their Stock considerably above what it ever gave. If any of the Directors, or other Managers, ever told such a Story, or made such an Insinuation, it was deceitful, unless they can shew that they had a Project, which would have made the Stock intrinsically worth as much as ever was given for it. And since no such Project ever appeared, I conclude, that People were led in to make these Bargains, by the *Dolus*, or Deceit of the Managers.

If the Stock was bought from a Man who knew nothing of the Story, then the Buyer is in the Case of those People who are brought into a prejudicial Bargain, by the *Dolus* or Fraud of a third Party. And by the Civil Law; such a Man has an Action *Dolo* against the Person guilty of the Fraud; and likewise he has an Action against the other Party Contractor, for Recovery of whatever he got more than enough by the *Dolus* of that third Party, *Joan. Voet. l. 4. tit. 3. §. 5. Si tamen non alterutrius ex contrahentibus, sed tertii dolus in emptione aliove boni Fidei negotio intervenierit; rationis est, hanc*

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ari de dolo actionem. — Quibus in
casibus etiam non ad contractus infirmatio-
nem commendari potest, sed tantum ad id quod
interest, dolum haud intervenisse, si modo dolo
careat uterque contrahentium; so that in this
Case likewise, 'tis plain from the Principles
of the Civil Law, that the Buyer would not
be obliged to fulfill his Bargain, if he were
by the Fraud of a third Party led in to give
more for a Thing than it is worth.

If the Bargain was made with any of those
People, who were guilty of this Fraud or
Deceit, then the Buyer was brought into
this Bargain by the *Dolus* of the Seller, and
induc'd to give a great Deal more for the
Thing he bought than it was really worth;
and consequently the Bargain is not only void,
but the Seller, the Committer of the Fraud,
is obliged to make up to the Buyer, what-
ever he lost by making such a Bargain. For
this being a *Contractus bonae fidei*: Si *Dolus*
causam dederit contractui, ipso jure nullus est,
Johan. Voet. l. 4. Tit. 3. Pandect. where he
adds, *Licet autem ob dolum causam dantem,*
contractus bonae Fidei nullus sit, tamen si ex tali
contractu Læsionem sustinuerit, qui ex Dolo cir-
cumventus erat, actionem ex ipso illo contractu
Dolo est habiturus, ad id quod Interest. Si vero
Dolus in contractu bonae Fidei inciderit, con-
tractus nullus non est, sed ex ipso contractu datur
actio. *Voet. lib. 4. Tit. 3. §. 4.* In the Civil
Law

Law 'tis said, That *Dolus* das *opusam* *contractui*, when the Deceit of one of the Parties leads the other into a Bargain, which otherwise he would not have entered into. And they say, That *Dolus incidit in contractum*, when the two Parties had from the Beginning a Mind to make such a Bargain, but one of them happens to be cheated some Way in the Bargain making, by the *Dolus* of the other.

The Case I have stated, will further appear plain from several Texts of the Civil Law, L. 37. ff. de *Dolo malo*. *Quod venditor ut Commendet dicit, sic habendum, quasi neque dictum neque promissum est. Si vero decipiendi emptoris causa dictum est: aequè sic habendum est, ut non nascatur adversus dictum promissumve actio, sed de dolo actio, & L. 13. § 14. ff. de acti. empti. Si Titius fundum in quo nonaginta jugera erant vendiderit, & in lege emptionis dictum est, in fundo centum esse jugera, & antequam modus manifestetur decem jugera alluvione adcreverint, placet mihi Neratii sententia existimantis, ut, si quidem sciens vendidit ex empto actio competat adversus eum, quamvis decem Jugera adcreverint: quia dolo fecit, nec dolus purgatur. And to this we may add the Opinion of *Jul. Paul. Recept. Sentent. L. 2. Tit. 17. § 4. Distracto fundo, si quis de modo mentiatur, in duplo ejus, quod mentitus est, officio Judicis aestimatione facta convenitur.* I think any of the Managers of
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South-Sea-Stock, or any of those who were
in the Secret, (as they call'd it) come very
plainly within these Texts of the Civil Law;
if they ever gave out that their Stock was
worth 1000 *per Cent.* it being impossible for
them to make it appear, that ever it was
worth 500, or that they could make a per-
petual Dividend of 50 *per Cent.* when as yet
they can shew no View they ever had of ma-
king a perpetual Dividend of 25 *per Cent.* by
the Law of Nature, and also by the Civil
Law, one ought to be so far from telling any
false Stories in Commendation of the Thing
he sells, that if it has any latent Vice or
Defect, he ought to tell it. *Gro. L. 2. c. 12.*
§ 9. Quod is qui cum aliquo contrahit, vitia
sibi nota rei de qua agitur significare debet. And
Toro Titulo. ff. De Aedilitio edicto.

I shall now answer some of the chief Ar-
guments, commonly used for the Validity of
TIME BARGAINS.

They pretend, That tho' the Bargains
seem now to be unequal, yet they were not
unequal at the Time when they were made;
because the Buyer might have then sold out
his Stock again, for as much as he gave
for it; and when the Equality or Inequality
of a Bargain is examined, Respect ought to
be had only to the Time when the Bargain
was made.

I Answer, That to put this Argument in its plain Dress, it is as much as to say, that the Opinion of the World is the only Rule whereby to fix and determine the Value of Things; but I have already given another Rule, and certainly it is the Rule by which the Opinion of the World regulates it self, when it is not led into an Error by the Artifice of cunning and designing Men: The Rule is, to fix the Value according to the Quality of the Thing sold, or the Yearly Profit it may produce. The Scarcity or Novelty of the Thing, and several other Accidents, may reasonably alter its Value a little; but when the World, without any of these Accidents, raise the Price of any Thing, it is because they are made believe, that the Thing has many more fine Qualities than they formerly thought it had, or that the Yearly Profits to be made by it are much greater than they expected; and if they are imposed upon, and made believe this, without any true Foundation, then they are in an Error, and their Opinion is not to be the Rule.

To shew People, That the World may be led into an Error, both as to the Quality and Produce of any Thing sold; I shall suppose two Stories, both of which may happen. *First,* I shall suppose, That some adroit Chymist falls upon a Way of making the Counterfeits of any precious Stone, so very like

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like, that it cannot be discovered but by the nicest and severest Trial: This counterfeit-
ing Gentleman comes to *England*, and dis-
poses of a great many of his Jewels at vast
Prices; the Buyers sell them again to others,
for the Price agreed on, they get from some
People ready Money, from others Bonds and
Bills; some wicked curious Fellow or ano-
ther comes to put these Stones to the Trial,
and finds them counterfeit; upon which Dis-
covery they fall prodigiously in their Price,
perhaps to one Tenth of what they once sold
for: Will not any reasonable Man say with
me, That not only the Granters of the Bonds
and Bills are not obliged to pay the full Con-
tents, but that likewise, all the Money got
by such Bargains, ought both by Law and E-
quity to be restored, and the Counterfeits all
returned to the first Coiner, and be hanged
for his Knavery.

Next, As to a general Error about the
Yearly Profits of any Thing, I shall suppose
that five or six honest Gentlemen, (or if you
please Two and Thirty) have got a Grant
of an Island discover'd by them; they di-
vide their Property in this Island into a
Thousand Shares, and they sell a good Num-
ber of them to their Friends, at a Hundred
Pounds each; before they dispose of the rest,
they go about and insinuate to every Body
they meet, That there will a vast Profit a-
rise

rise out of this Island Yearly: The credulous
and unthinking Multitude believe them, and
they buy up their Shares at vast Prices, per-
haps, two or three Hundred Pounds per Share:
Upon this, they open Books, and take in a
Subscription at Four Hundred Pounds for
each Share; the People throng so upon them
that 'tis reckon'd a prodigious Favour to
get a Subscription: The Gentlemen Man-
agers think this a fit Harvest for them, and
to raise the Prices of their Shares yet a little
higher, they give out in all Companies, that
their Shares will be soon sold for a Thousand
Pounds *per* Share at least, because they find
they will be able to make a Dividend of Fifty
per Cent. out of the Profits arising to them by
their Island, tho' at the same Time they know
that the Island will not be able to produce
Ten Thousand Pounds a Year near Profit;
however, finding the People fond of believing
any Thing they say, they open Books, and
take in Subscriptions at a Thousand Pounds
a Share, which immediately brings up the
Price of the old Shares first disposed of to a
Thousand: The Gentlemen then thinking
they had made enough of the Credulity of
the People, and fearing some Body should be
at the Pains to take a View of their Island
and discover the Cheat, sell out all the Shares
they can, and advise their particular Friends
to do so: This brings more of their Shares

to the Market, than the Creditors have Money or Credit to buy, which makes them sell prodigiously in their Price: Then the People awoken out of their Dream, and they begin to examine what Reality is in the Matter; they find the Island is hardly capable of producing Ten Thousand Pounds a Year: Upon that, they come and ask the Managers (I had almost said Directors) how they came to give out, that they would make Fifty Thousand Pounds a Year of it. They gravely answer, Why, we never imagined we were able to make so much a Year from the Produce of the Island, but we have made such a Sum by the Subscriptions, and by Means of that, we may divide to you for Four or Five Years Fifty Thousand Pounds a Year; but then the Profit we have made by Subscriptions will be exhausted, and you must content your selves with the real Produce of the Island. I shall leave the cheated World to give what Names to these Gentlemen Managers they think they deserve.

But, in my Opinion, the World is here again in an Error as to the Value of a Thing, upon account of over-valuing its yearly Produce; so that in such Cases as these, the general Opinion about the Value of a Thing ought not to be the Rule, but all Bargains ought to be void which were made while the World was in that Error. I have before cited

ted *Grotius*, as an Authority for my Opinion,
That by the Law of Nature, no Man is
bound to stand to a Promise, which by any
Deceit or Error he is induced to make; and
if any will alledge, that it adds to the Vali-
dity of a Man's Promise, That other People
were in the same Mistake; I shall ask what
Number of People must be in the same Mi-
stake with him, in order to make his Promise
good; if one should answer, Every Body;
Then I am sure this Argument will do no
Service to South-Sea Bargains, because a
great many had never any Faith that Way;
and if one should fix upon a Number, I shall
take *Horace's* Way of Arguing, and ask, what
Difference One less would make, or the Rea-
son that Ten Thousand Peoples agreeing in
the Value of a Thing, should make a Pro-
mise good, which Nine Thousand Nine
Hundred Ninety Nine Peoples agreeing would
not.

If the South-Sea Stock was not intrinsi-
cally worth the Price it bore, every Man who,
knowing what it was, sold it to his Neigh-
bour at the current Price, cheated him in so
far, as he exacted more than the known Va-
lue of the Thing sold, the Man to whom he
sold it, might perhaps, keep the Candle from
burning his Fingers; but he could do it no
Way but by putting the Cheat upon another.
It was like selling a Horse with a secret Dis-
ease,

case, the Buyer had no way to save himself harmless, but by putting the Cheat upon a third Person, and so getting rid of the bad Bargain before the Disease broke out.

The second Argument made use of by the Sellers of TIME BARGAINS, is that what they sold was an uncertain Chance, much like a *Talus aleæ* or *Retis*, and therefore there could be no Inequality in the Bargain, since there was no determining the Value of the Thing sold; it might have been worth a great deal more than they sold it for, as well as less.

Answered, That a Chance may be bought too dear as well as other Things. There is a Method of putting a Value upon any Chance that can happen: If two Gamesters were throwing a Main at Dice for a Guinea, and the Caster had Ten against Seven, 'tis a Chance which of them shall have the two Guineas; the Setter has the best Probability to have them, because he has Two to One, and consequently, his Chance is worth Twenty Eight Shillings. But if some ignorant Man should come in, and give him Ten Guineas for his Chance, sure there's no Body but will confess, that such a Bargain ought to be made void by the Laws of Equity.

If any Man will shew, that *South-Sea* Stock could ever have been worth a Thousand Pound *per Cent.* of intrinsick Value, he may have something to say; at least, it would then

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then come to a Calculation of the Probabilities on each Side, and we could put an exact Value upon the Chance. But I believe no Man will say, that there was ever any Probability of its coming to be worth near to what it was sold for.

3. If these Gentlemen offer to put their Case upon this Argument, I think they very fairly bring themselves within the Meaning of *Stat. 9. An. C. 14.* which avoids all Securities for Money won at Play, or by Betting; and 'tis very probable, that the Judges will bring all Dealing in Stocks after their Price rises above the real Value, under the Meaning of this Act; for then the Price depends entirely upon the Whim of the People, and all Dealing in them is nothing but Betting or Wagering, whether or not the Whim will last longer, or will raise the Price of Stock higher.

They say, That *England* being a trading Nation, it tends to the Encouragement of Trade, and is consequently for the Interest of the Country, that every private Man be left to make the best Bargain for himself he can, without any Questions whether it be equal or not.

Answer'd, It is certainly the Interest of *England* to encourage Trade as much as possible, and for that Reason, no Notice ought to be taken of what Bargains People make in that

that Way, unless plain Knavery appear; but the Trade, properly called Stock-jobbing, which is a Way of dealing in publick Stocks, not with any Design to let the Money remain there, and trust to the Dividend for the Interest, but only with a Design to make Profit of it, by buying to sell it to another, perhaps next Day, or by selling now to buy cheaper afterwards. This Trade, I say, is a prejudicial Trade to the Nation, and consequently ought to be discouraged by all Ways and Means possible; among which, I believe, it would be one of the most effectual, to avoid all TIME BARGAINS in Stocks, where the least Inequality appeared; especially, if at any Time, a Set of designing Men should, by their false Stories and Insinuations, make the People run mad, on purpose to make their own Advantage of the Simple and Credulous.

4. They alledge, That there is the same Reason for avoiding all Bargains in Stocks which have been made since *January* last; That there is, for avoiding the TIME BARGAINS, we are now speaking of, but there have been so many of these made, and in such a private Manner, that 'tis impossible to get it effectuate: The Consequence would be, that the real honest Men would be the only People undone, because they would declare honestly what Bargains they have made; and the Knaves, who could swear heartily to any Thing

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Thing that's for their Interest, would be the only Gainers, for they would stand upon Oath the most Part of their Bargains; and if the Parliament should resolve to make void only the TIME BARGAINS, it would be an Injustice done to a great many who had bought Stock with ready Money, and sold it out to Time.

To this I answer, That I am positively of Opinion, that if it were possible, all Bargains made since People were first led into that Error, or rather Madness, of paying great Sums for they knew not what, ought to be made void, and the more of them are sustained, the more Injustice is done. It is perhaps impossible to avoid all the Bargains that are now long ago compleated and done; but tho' that be impossible, the other is not; for all the TIME BARGAINS may be easily proved, and the Inequality made appear; so that all that can be inferred from this Argument, is, that the Parliament, out of Necessity, and for the Tranquillity of the Nation, will be obliged to do a Piece of Injustice, that is, to confirm all the Bargains in Stocks which are now intirely compleated and finished; But as to the TIME BARGAINS, they have not this Necessity to pretend; they may be all easily discovered, and made void; the only remaining Reason then is, that it would be an Injustice done to the Sellers, who had bought with Money, and sold out to Time, which I deny. If there is any Injustice done to the Seller, it is the not

giving him Repetition against the Man he bought from; which is a Piece of Injustice occasioned by Necessity, and for the Sake of publick Conveniency, which is always preferable to any private View: But the obliging the Buyer upon Time to make good his Bargain, would be doing a Piece of Injustice to one Subject, for no other Reason, but to prevent another's Loss; whereas if there is any Favour to be shown, it ought rather to be shown to the Buyers than to the Sellers, because if the Thing sold was a Cheat, and not worth the Price agreed to be given, it may be supposed that the Seller was a Cheat, and knew that the Thing sold was not worth what he was to get for it: But it can never be supposed, that the Buyer knew any Thing of its not being worth the Price it bore. Another Reason is, that if this Affair of TIME BARGAINS is examined, it will be found that the supporting the TIME BARGAINS will ruin a great many Families of poor Traders and Merchants, to make a few Stock-jobbers and Gentlemen too rich, and the avoiding of them, tho' it may make some People poorer than they think themselves at present, yet it will quite ruin none. In this Case, I think 'tis no difficult Matter to determine what to do.

All the Arguments I have yet made Use of are good against all TIME BARGAINS in general. I come now to speak of the other Sort of Bargains, in which Credit is given for the Price, viz. where the Stock or Subscription was sold a good deal above the Market, and

a Bond or Bill, tak
payable such a Time after Date. The parti-
cular Argument against Bargains of this Kind,
is, That they are usurious, and consequently
void in Law.

Money of its own Nature is barren, and
can produce nothing; but since a Man who
has Money may buy Lands, or may mer-
chandize with his Money, and so make Profit,
therefore the Law allows him, when he lends
his Money to another, to put a Value upon
that Hope or Expectation of Profit he might
have had, if he had employed his Money him-
self. By the Law of Nature there is no par-
ticular Value put upon this Hope, but the
Parties Contracters are allowed to put what
Value they please upon it, according to E-
quity and their own Consciences. But by the
Civil Law of each Nation, there is a certain
Value put upon this Hope of Gain, and every
Man who lends out his Money, must lend it
out at this set Value: Let him value this
Hope of Profit as high as he pleases, yet he
cannot by Law demand more from the Bor-
rower for the Use of his Money, than the legal
Value: If he thinks it not enough, then he
may make Use of his Money himself, and so
get the Profit he expects, by which Means
there is no Injustice done him. This is the
Argument made Use of by all Writers for the
Lawfulness of Usury, *Dum ergo per mutuum
concesso alteri nummorum suorum usu, sese luc-
superioris varis captandi facultate privat, aliisque*

*lucrum praeter occasionem, quidam vicissim ab iis
jure pacis utitur usuram legitimam, eamque certam,
incerti licet, sed tamen pretio certo aestimari soliti,
vicem suppleturam, are the Words of Johan. Voet.
l. 22. Tit. 1. § 4. De usuris.*

And all Lawyers know, that the lending of Money, or what the Romans call'd *Mutuum*, may consist in the giving one any Commodity to sell, and to make Use of the Price as borrowed Money, *Uinii Instit. l. 3. Tit. 15. Prin. Num. 5. Item, Si Lancem tibi vendendam dederim, ut nummis utereris, perinde mihi obligaberis, ac si vendidissem ipse, pretiumque tibi tradidissem.* Now, I take it to be the same Thing, when a Man sold another a Thousand Pounds South-Sea Stock, when it was giving Eight hundred Cent. and took his Bond payable for it six months after, as if he had lent him Eight thousand Pounds; and therefore, for the Forbearance of Eight thousand Pounds for half a Year, he might have taken his Bond for the Eight thousand Pounds, and Two hundred Pounds more by Way of legal Interest: But if, instead of this Eight thousand two hundred Pounds, he takes a Bond for Ten thousand Pounds payable half a Year after, it is downright Usury; for it can never be said that the whole Ten thousand Pounds was by Way of Price for a Thing that every Body knows might have then been bought for Eight thousand Pounds. This would be Extortion to the highest Degree, so that the only Pretence for the Two thousand Pounds more, is, That it
was

as paid for Forbearance of the Money, and Pounds for half a Year, which is fifty per Cent. per Annum, a pretty tolerable Interest.

Nor is it any Excuse for the Seller, that both the Buyer and he expected that the Stock would have been above a Thousand per Cent. in that Time, and therefore it was reasonable the Seller should have ten thousand Pounds for his one thousand Pounds Stock; For this is selling his *Species lucri futuri* above the legal Value, and is consequently Usury: If he had not aimed to content himself with the legal Value of his Hope of Gain, he might have kept his Money, that is his Stock to himself, and so the great Profit expected by the Rise of Stocks, would have all accreted to himself alone.

And as for the Argument of its being a Bargain of Chance, it is of no Weight, for it be as great a Chance as ever yet was, if that Chance comes to be sold at a certain Value or Price, any Man who takes more for it than the current Price and legal Interest for the Time, upon Account of the Forbearance of Payment, is guilty of Usury.

By Stat. 37. Hen. VIII. C. 9. It is Enacted, that none shall sell his Wares or Merchandise for any, and within three Months after, buy the same again, at a lesser Price, knowing them to be the same Wares; or buy any corrupt Bargain of Wares, Money, or other things; or buy any Mortgage of Land, and take

...ing Day of Payment more
...ding to the Rate of 10 *per Cent*
for every whole Year. And by *Stat. 13. Eliz.*
C. 8. All Bonds, Contracts, and Assurances
upon Usury, are declared void. And it is
further Enacted, That the *Stat. of Hen. VIII.*
in. 1. be observed largely and strongly, against
the Party offending by any Way or Device,
directly or indirectly. And all our Statutes
since that Time Enact, That none shall take
directly or indirectly, for the Loan of Mo-
ney, or any Commodity above the Value of
8, 6, or 5 *lib.* for the Forbearance of 100 *lib.*
for Year, and all Bonds, Contracts, &c. where-
upon more shall be reserved, are made void.
If the selling of any Commodity, thirty or
forty *per Cent*, above the Market-price, be-
cause of the Delay of Payment, for half a Year
or three Months, is not a Way or Device
of indirectly taking Usury: I am sure we can
fix upon no indirect Way at all of being a
Usurer: And if this is not judged within
the Meaning of the said *Stat. 13. Eliz.* it will
be very easy for two Copartners in Usury to
elude the Statute of *Hen. VIII.* for one of
them may sell the Goods at a great Price to
the poor Borrower, to be paid such a Time
after, and the Other may buy them back im-
mediately at an Under-value, and furnish the
ready Money to the oppressed Man, who
must of Necessity have it at any Rate.

I come now to consider the TIME BARGAINS
which are not as yet compleated, but stand

in Contract between the Buyer
and the Seller, the Stock or Subscription still remaining
in the Name and Possession of the Seller. Be-
sides the Arguments already advanced, there
is a particular Argument against this sort of
Bargains, viz. That after the Stock or
Subscription was sold, and before it was de-
livered, the Seller render'd the Stock and Sub-
scription much worse than it was when he sold
it, by his consenting, either tacitly or ex-
pressly, at the General Court, to the giving
the Annuitants and Third and Fourth sub-
scribers at 400 instead of 800 and 1000 per
Cent.

I know it is alledged by the Sticklers, for
the Validity of TIME BARGAINS, that they
who bought Stock, bought it with all the
Dangers of Loss and Hopes of Advantages
that attended it, and therefore they are as much
obliged, notwithstanding of this Resolution
of the General Court, as the Sellers would
have been, tho' there had been a Subscription
taken in at 1500, after they had sold, and
before they deliver'd.

I grant, that if the Stock had been imme-
diately transfer'd, or the Subscription Re-
ceipt deliver'd, the Buyer could have made
no Complaint upon this Account; but 'tis
a known Principle in Law, that while the
Thing sold remains in the Possession of the
Seller, if it become worse, either by his Act
and Deed, or by his Neglect, he is oblig'd
to make up the Loss to the Buyer: This
being

ARTICLE 10. Of the Olo and Profit of
the Estates, &c. the common Rule of the
Civil Law, *Venditor in re asservanda tenetur
prohibere Dolum, Latam & leviem Culpam.* l. 23.
ff. de Reg. juris.

From thence I conclude, That the Seller
could not either tacitly or expressly consent
to any Resolution that would make the
Stock worse than when he sold; otherwise
he thereby oblig'd himself to make up the
Loss to the Buyer. If therefore he was at
that General Court, and consented to the
Ease (as they call it) of the Annuity and
Third and Fourth Subscribers, he made the
Stock he had sold worse, by his own Act and
Deed; and if he was not there, he made it
worse by his own Neglect; so that in either
Case, he is oblig'd to make up the Loss
to the Buyer. For altho' the Buyer bought
it with all the Dangers of Loss and Hopes
of Profit that attended it; Yet if any of
these Losses was occasion'd by the Act and
Deed, or Fault of the Seller, he must make
up the Loss. Indeed, if the Seller can shew
by a Protestation taken against that Resolu-
tion, that he did all he could against it, then
he would be in no Fault; and consequently
the Buyer could make no Use of this Argu-
ment.

I have now only remaining to consider, the
Contracts upon Third and Fourth Subscrip-
tions, against which every Argument as yet
adduced will be good; that is to say, against
those

these Bargains.

It has been promis'd that a particular Argument shall be made. When any Man bought one of these Subscriptions, he consider'd the Capital that Company were to have by their old Stock, and the new ingrafted Stock, he foresaw that a Company with such a vast Capital, would be able to procure what Favours and Immunities were necessary from the Government, and that by this Means they would be able to engross the whole Trade of *Europe* to themselves, if their Stock were kept under any tolerable Management: From this they behov'd to make great Profits, and for that Reason he was very willing to have a Share in it at any Rate. But since he had not (as he thought at that Time) the good Fortune to get in as a Subscriber, he (seduc'd by the vulgar Error) was content to pay a Premium to any Body that would give him a Right to a Subscription; most Part of this Premium he paid for the Use he was to have of so much Money for such a Time: If he bought Stock at that Time, he was oblig'd to pay Ten Thousand Pound for each Thousand Pound Stock: If he bought a Thousand Pound Third Subscription, then he was to have the Use or Forbearance of Nine Thousand Pound for Half a Year, of Eight Thousand for Half a Year more, &c. This Forbearance of Payment he reckon'd worth such a Premium; and, therefore, he

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willingly

the great Alteration in the General Court, and
the Reduction of the Stock to Four Hundred
thousand instead of a Thousand, by the Consent of
these very People of whom he had bought
subscriptions, the Value of the Stock was
very much reduc'd, and the View of their
profits diminish'd, which is one Argu-
ment already made Use of for the avoid-
ing of these Bargains. But then another is
that by this Alteration he was to have the
Value of Three Thousand Pound only, instead
of Nine Thousand for such a Time. And
there, a reasonable Man will expect, that a
Man should pay as large a Premium for the
Forbearance of the Three Thousand Pound,
as he was to pay for the Forbearance of
Nine Thousand Pound for the same Time.
I have now examined the several Branches
of this great Question as briefly as I could;
I believe I have afforded a good Deal of Caf-
fee-house-Talk to People who love to hold
forth. I hope the Justness of my Way of
Reasoning, will easily appear to every Man
who is not a Seller; as for these Gentlemen,
they have an Argument on their Side, viz.
Self-Interest, which I cannot Answer, nor do I
know any Argument strong enough against it,
but an Act of Parliament; and for this Rea-
son I humbly think, that the Members of Par-
liament are in Duty obliged to put an End
to a Dispute, which if left to the ordinary
Courts, may produce Thousands of vexatious
Lawsuits.

now suits, and abstract People
from their ordinary Business, for many Years
to come; nor let any Man imagine, that the
determining of two or three different Cases,
will put an End to all the rest: When a
Man's Interest is concern'd, he is easily
persuaded, and a clever Attorney will soon
find Arguments to persuade the Seller, that
his Case is different from every one of the
Cases, in which Judgment is given.

If no Act of Parliament intervene
to take the Freedom to foretell, that every one
of these TIME BARGAINS will come to a
Trial in *Westminster-Hall*, if they are not
made up before this Session of Parliament is
at an End; at present the Sellers are easie
and good natur'd to their Chaps, the Buyers,
because they fear an avoiding Act, but if
they were once out of Danger, they will
appear in their natu Light, as *Nero* did,
full of Cruelty and Tyranny. The Parlia-
ment ought to consider, that there are a great
many of their Bargains ought to be perform-
ed at *Christmas*; if they adjourn without
taking Notice of this great Controversy,
they will make a merry *Christmas* for the
Gallies and Spunging-Houses, but a melan-
cholly for many a poor Tradesman and
his Family. It would have been a happy
thing for this great City, if Credit could
have been revived, and our Money made cir-
culate before this Time of General Dunning
came on: But it's impossible to revive

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